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 55 **UNITED STATES DISTRICT COURT**
 56 **NORTHERN DISTRICT OF CALIFORNIA**

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 58 ANIBAL RODRIGUEZ, SAL
 59 CATALDO, JULIAN
 60 SANTIAGO, and SUSAN LYNN
 61 HARVEY, individually and on behalf of all
 62 others similarly situated,

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 64 Plaintiffs,

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 66 vs.

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 68 GOOGLE LLC,

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 70 Defendant.

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 72 Case No.: 3:20-cv-04688

73
 74 **DECLARATION OF MARK MAO IN
 75 SUPPORT OF PLAINTIFFS' RULE 15(a)
 76 MOTION FOR LEAVE TO AMEND
 77 COMPLAINT**

78
 79 The Honorable Richard Seeborg

DECLARATION OF MARK MAO

I, Mark Mao, declare as follows:

1. I am a partner with the law firm of Boies Schiller Flexner LLP, counsel for Plaintiffs in this matter. I am an attorney at law duly licensed to practice before all courts of the State of California. I have personal knowledge of the matters set forth herein and am competent to testify.

2. I submit this Declaration in support of Plaintiffs' Rule 15(a) Motion for Leave to Amend Complaint.

3. Attached hereto as **Exhibit 1** is a true and correct copy of Plaintiffs' proposed Fourth Amended Complaint.

4. Attached hereto as **Exhibit 2** is a true and correct copy of a redline comparing Plaintiffs' proposed Fourth Amended Complaint to Plaintiffs' Third Amended Complaint.

5. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts of a document Google produced in discovery labeled GOOG-RDGZ-00021160. This document was produced on July 6, 2021.

6. Attached hereto as **Exhibit 4** is a true and correct copy of a document Google produced in discovery labeled GOOG-RDGZ-00130745. This document was produced on July 28, 2022.

7. Attached hereto as **Exhibit 5** is a true and correct copy of a document Google produced in discovery labeled GOOG-RDGZ-00015004. This document was produced on March 25, 2021.

8. Attached hereto as **Exhibit 6** is a true and correct copy of a document Google produced in discovery labeled GOOG-RDGZ-00020680. This document was produced on April 12, 2021.

9. Attached hereto as **Exhibit 7** is a true and correct copy of a document Google produced in discovery labeled GOOG-RDGZ-00130381. This document was produced on July 28, 2022.

1 10. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts of a document
2 Google produced in discovery labeled GOOG-RDGZ-00130416. This document was produced on
3 July 28, 2022.

4 11. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts of a document
5 Google produced in discovery labeled GOOG-RDGZ-00014556. This document was produced on
6 March 25, 2021.

7 12. Attached hereto as **Exhibit 10** are true and correct excerpts from the transcript of
8 the September 15, 2022 deposition of Google employee David Monsees.

9 13. Attached hereto as **Exhibit 11** is a true and correct copy of a document Google
10 produced in discovery labeled GOOG-RDGZ-00024709. This document was produced on July 6,
11 2021.

12 14. Attached hereto as **Exhibit 12** are true and correct excerpts from the transcript of
13 the September 9, 2022 deposition of Google employee Chris Ruemmler.

14 15. Attached hereto as **Exhibit 13** is a true and correct copy of a document Google
15 produced in discovery labeled GOOG-RDGZ-00130322. This document was produced on July 28,
16 2022.

17 16. Attached hereto as **Exhibit 14** is a true and correct copy of a document Google
18 produced in discovery labeled GOOG-RDGZ-00089546. This document was produced on April
19 27, 2022.

20 17. Attached hereto as **Exhibit 15** is a true and correct copy of a document Google
21 produced in discovery labeled GOOG-RDGZ-00116371. This document was produced on May
22 27, 2022.

23 18. Attached hereto as **Exhibit 16** is a true and correct copy of a document Google
24 produced in discovery labeled GOOG-RDGZ-00039094. This document was produced on
25 September 27, 2022.

1 19. Attached hereto as **Exhibit 17** is a true and correct copy of a document Google
2 produced in discovery labeled GOOG-RDGZ-00171164. This document was produced on July 28,
3 2022.

4 20. Attached hereto as **Exhibit 18** is a true and correct copy of a document Google
5 produced in discovery labeled GOOG-RDGZ-00087964. This document was produced on July 28,
6 2022.

7 21. Attached hereto as **Exhibit 19** is a true and correct copy of a document Google
8 produced in discovery labeled GOOG-RDGZ-00044478. This document was produced on
9 September 27, 2021.

10 22. Attached hereto as **Exhibit 20** is a true and correct copy of a document Google
11 produced in discovery labeled GOOG-RDGZ-00129096. This document was produced on July 28,
12 2022.

13 23. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts of a document
14 Google produced in discovery labeled GOOG-RDGZ-00090236. This document was produced on
15 April 27, 2022.

16 24. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts of a document
17 Google produced in discovery labeled GOOG-RDGZ-00046896. This document was produced on
18 September 27, 2021.

19 25. Attached hereto as **Exhibit 23** is a true and correct copy of excerpts of a document
20 Google produced in discovery labeled GOOG-RDGZ-00020692. This document was produced on
21 April 12, 2021.

22 26. Attached hereto as **Exhibit 24** is a true and correct copy of excerpts of a document
23 Google produced in discovery labeled GOOG-RDGZ-00151992. This document was produced on
24 July 28, 2022.

25 27. Attached hereto as **Exhibit 25** is a true and correct copy of excerpts of a document
26 Google produced in discovery labeled GOOG-RDGZ-00151484. This document was produced on
27 July 28, 2022.

1 28. Attached hereto as **Exhibit 26** is a true and correct copy of excerpts of a document
2 Google produced in discovery labeled GOOG-RDGZ-00144760. This document was produced on
3 July 28, 2022.

4 29. Attached hereto as **Exhibit 27** is a true and correct copy of a document Google
5 produced in discovery labeled GOOG-RDGZ-00059486. This document was produced on October
6 22, 2021.

7 30. Attached hereto as **Exhibit 28** is a true and correct copy of excerpts of a document
8 Google produced in discovery labeled GOOG-RDGZ-00046758.R. This document was produced
9 on October 12, 2021.

10 31. Attached hereto as **Exhibit 29** is a true and correct copy of excerpts of a document
11 Google produced in discovery labeled GOOG-RDGZ-00185669. This document was produced on
12 July 28, 2022.

13 32. Attached hereto as **Exhibit 30** is a true and correct copy of a document Google
14 produced in discovery labeled GOOG-RDGZ-00061316. This document was produced on
15 November 1, 2021.

16 33. Attached hereto as **Exhibit 31** is a true and correct copy of excerpts of a document
17 Google produced in discovery labeled GOOG-RDGZ-00031656. This document was produced on
18 July 6, 2021.

19 34. Attached hereto as **Exhibit 32** are true and correct excerpts from the rough
20 transcript of the October 25, 2022 deposition of Google employee Eric Miraglia.

21 35. Attached hereto as **Exhibit 33** is a true and correct copy of a document Google
22 produced in discovery labeled GOOG-RDGZ-00149701. This document was produced on July 28,
23 2022.

24 36. On September 30, 2022, Plaintiffs served Plaintiffs' Tenth Set of Requests for
25 Production, Plaintiffs' Seventh Set of Interrogatories, and Plaintiffs' Fourth Set of Requests for
26 Admission. These sets included a small number of requests relating to [REDACTED] and Google
27 services other than Firebase. Plaintiffs have now served a total of 25 interrogatories and 52 requests
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1 for admission. Plaintiffs' latest sets of written discovery requests are their last set relating to
2 Google's collection of WAA-off data from third-party apps.

3 37. On September 30, 2022, Plaintiffs also served notices of deposition for ten Google
4 employees, bringing their total to fourteen.

5 38. Plaintiffs' counsel emailed Google's counsel a prior version of Plaintiffs' proposed
6 amended complaint on October 17, 2022, including a redline showing proposed changes made to
7 the Third Amended Complaint. During a meet-and-confer about the proposed amended Complaint
8 with Google's counsel on October 20, 2022, Plaintiffs' counsel informed Google's counsel that
9 Plaintiffs will not oppose reasonable discovery requests relating to matters that are newly
10 addressed in the Fourth Amended Complaint. On October 24, Google's counsel informed Plaintiffs
11 that Google does not consent to the amendment, and that it will oppose this motion.

12 39. On May 13, 2022, Plaintiffs' counsel sent an email to Google proposing a process
13 in which Plaintiffs' experts would use test devices to generate app activity data using different
14 privacy settings, and Google would produce the data as it is saved on Google's servers. To craft
15 the specifics of this proposal, Plaintiffs need to know the locations in which app activity data is
16 saved. Plaintiffs also served written discovery requests on May 27, 2022 seeking this information.
17 Plaintiffs have moved to compel responses to some of those requests relating to Google's storage
18 of WAA-off data. Dkts. 250, 253.

19 40. Google's counsel did not respond to Plaintiffs' May 13, 2022 email until August
20 11, 2022. Google's response did not address Plaintiffs' testing proposal. Google's response
21 identified just one new log, on top of the three it had previously identified. Google's response
22 indicated that its search for logs containing app activity data remains ongoing.

23 41. In the following months, Google admitted that thousands of logs contain WAA-off
24 data and refused to disclose the names of those logs to Plaintiffs.

25 42. As of September 1, 2021, Google had designated just three document custodians,
26 and the parties had neither agreed upon nor finished motion practice regarding search terms for
27 those custodians.

43. Google did not produce a single unique document from the files of any of the 19 custodians included in Magistrate Judge Tse's December 1, 2021 Order (Dkt. 184) until July 28, 2022.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 28th day of October, 2022, at San Francisco, California.

/s/ *Mark Mao*